



# DEPARTMENT OF THE PROSECUTING ATTORNEY

Peter B. Carlisle, Prosecuting Attorney • Douglas S. Chin, First Deputy

## POWER, DUTIES AND FUNCTIONS

The voters of Oahu elect the Prosecuting Attorney every four years. The Prosecuting Attorney shall:

- Attend all courts in the City and conduct, on behalf of the people, all prosecutions therein for offenses against the laws of the State and the ordinances and rules and regulations of the City;
- Prosecute offenses against the laws of the State under the authority of the Attorney General of the State;
- Institute proceedings before the district judges for the arrest of persons charged with or reasonably suspected of public offenses, when the Prosecuting Attorney has information that any such offenses have been committed, and for that purpose, take charge of criminal cases before the district judges;
- Draw all indictments and attend before and give advice to the grand jury whenever cases are presented to it for its consideration; and
- Investigate all matters that may properly come before the Prosecuting Attorney. Nothing herein contained shall prevent the conduct of proceedings by private counsel before courts of record under the direction of the Prosecuting Attorney.



Deputy Prosecuting Attorney Glenn Kim was sworn in as a Judge of the First Circuit Court, State of Hawaii. Kim served the department for 14 years. Kim graduated from Harvard University with a doctorate degree and U.H. William S. Richardson School of Law. He is a Vietnam veteran who earned the Bronze Star. (Pictured: Glenn Kim & colleagues)

## ORGANIZATION OF THE DEPARTMENT

The department is organized into administration and six divisions. Each of the divisions has a team of trial attorneys headed by at least one chief and, in some divisions, one or more team captains. Teams of support staff, each of which is headed by a supervisor, assist the attorneys.

The six divisions are: (1) Career Criminal Division; (2) Domestic Violence/Juvenile Offenders Division; (3) Trials Division; (4) Screening and Intake Division; (5) Appellate Division; and (6) Misdemeanor and Traffic Division.

### A. CAREER CRIMINAL UNIT

The **Career Criminal** (CC) consists of one division chief and 11 attorneys. Two paralegals, six clerical staff and five victim advocates shared with the felony Trials Division assist them.

CC is a highly skilled prosecutorial litigation unit that vertically prosecutes those offenders who are identified as recidivists, or career criminals by Hawaii Revised Statutes Section 845-3, as well as all cases involving convicted felons in possession of or using firearms and many of the felony-level sexual offenders.

From the time the case is accepted into the office until the time it is disposed of by sentencing, one prosecutor is responsible for that and any other case the individual defendant may have pending. The prosecutor follows the case from preliminary hearing or grand jury, through pre-trial motions, trial and finally sentencing. Through this vertical prosecution, a special working relationship between the police, witnesses, victims and the prosecutor can be fostered. This approach permits continuity in prosecution and enables the prosecutor to better handle the many challenges presented by these cases.



The Honolulu Police Department honored Deputy Prosecuting Attorney Rom Trader (left) as their Outstanding Citizen of the Year for his personal commitment to obtaining justice for victims of crime and the community. As well as successfully prosecuting many difficult cases, Trader shares his knowledge and expertise with law enforcement in the training of HPD detectives, recruits, and crime lab staff.



Deputy Prosecuting Attorney Chris Van Marter (right) was featured on Dateline NBC's "Trail of Suspicion" for the successful theft and fraud prosecution of Henry Calucag. Calucag is suspected to be involved in the murder of three Hawaii men who went missing in the Philippines

Section 845 cases consist primarily of drug and property crimes, such as burglary, theft, forgeries, vehicle thefts and auto break-ins. These cases are almost exclusively motivated by a desire to obtain property to trade for money to buy drugs. The most common drug bought is crystal methamphetamine, or “ice”. Ice is also a factor in the majority of the remaining crimes handled by this unit, the violent crimes such as murder, robbery, home invasions, assaults and firearms offenses.

Convicted career criminal defendants are exposed to enhanced sentencing requirements such as mandatory imprisonment, minimum terms which must be served before the inmates are eligible for release on parole, extended terms of imprisonment and consecutive sentences.

The vast majority of sexual assault cases involve children who are repeatedly victimized by acquaintances or family members. These cases all present unique prosecution problems, including late reporting, fearful victims, poor memory for dates in long-term abuse cases and an absence of witnesses other than the child and the perpetrator. Other sexual assault cases include child-stranger and adult-stranger and adult-acquaintance cases. Because of the sheer volume and complexity of sexual assault cases, experienced deputies in other units have been hand-picked to handle these cases.

All convicted felony sex offenders are included in the State’s Sex Offender Registry website pursuant to “Megan’s Law” and must adhere to strict registration and reporting requirements.

## **B. DOMESTIC VIOLENCE/JUVENILE OFFENDER DIVISION**

The **Domestic Violence/Juvenile Offender Division** consists of 22 attorneys, three paralegal assistants, six victim/witness counselors and nine support staff organized into three teams. Each team is highly specialized in the prosecution of either domestic violence or juvenile crimes and is supervised by an experienced attorney.

The **Domestic Violence Felony Team** consists of six attorneys who are supervised by an experienced domestic violence felony prosecutor. This team is responsible for prosecuting all felony domestic violence cases along with some sexual assault cases. This team focuses on the more serious violent offenses stemming from intimate relationships (husband-wife, boyfriend-girlfriend & same sex couples) and parent-child relationships.

In addition, this team also shares responsibility for prosecuting felony sexual assault cases with two other divisions within the office. While the majority of these cases involve child and adult victims victimized by perpetrators known to them, i.e., natural father, step-father, uncle, brother, boyfriend, neighbor, family friend, and other generally trusted acquaintances, this team also handles cases involving strangers, chronic child molesters and serial rapists.

The Domestic Violence Felony Team employs vertical prosecution to better deal with the dynamics of these cases. Through vertical prosecution, the assigned prosecutor works with the victims, witnesses, and police investigators from the inception of the case, up through preliminary hearings, grand jury, pre-trial motions, trial, and sentencing. In order to accomplish this, a prosecutor is on-call 24 hours a day to assist police with various aspects of the investigation and then once completed, to review the case and make appropriate charging decisions. This approach maintains continuity and enables the prosecutor to better handle the many challenges presented by these cases which typically involve uncooperative domestic violence victims who recant or minimize at court due to fear of and/or affection for the perpetrator. It also allows our attorneys and staff to better service the often emotionally fragile and distraught sexual assault victims with greater sensitivity.

The **Domestic Violence Misdemeanor Team** consists of eight attorneys who are supervised by an experienced domestic violence felony prosecutor. This team handles all misdemeanor family or household member abuse cases under Section 709-906, HRS, along with all Family Court restraining order violations under Chapter 586, HRS. As such, this team is a high-volume unit, which focuses on violence stemming from intimate relationships (husband-wife, boyfriend-girlfriend & same sex couples) and parent-child relationships.

This team also employs vertical prosecution to the extent that they review, charge, and try their own cases. As part of this effort, each day a prosecutor responds to the police department receiving desk at about 3:00 a.m. to review/charge those cases involving misdemeanor defendants in custody. This helps ensure more consistency and better handling of these cases, which are made difficult, as the majority of victims are reluctant and/or uncooperative. In addition, as many of these offenders and victims are the same individuals handled at the felony level, it is helpful to have good communication between misdemeanor and felony prosecutors so that significant developments and information can be beneficially shared.

The **Juvenile Offender Team** consists of seven attorneys supervised by an experienced Family Court Prosecutor. This team is responsible for the prosecution of all juvenile offenders (persons under 18 years of age at the time an offense is committed). Their cases range from traffic/misdemeanor offenses to all types of felony offenses, including sexual assaults and homicides. The offenders range from first-time offenders who commit less serious crimes to the hard-core dangerous and repeat offenders who may be waived to adult court for more serious crimes.

This team also employs vertical prosecution to the extent that they review, charge, and try the majority of their own

cases. They do receive, however, some assistance at the initial conferral stage from the Screening and Intake Division and from the Domestic Violence Felony Team.

### **C. TRIALS DIVISION**

The **Trials Division** consists of one division chief, five team captains and 21 trial attorneys. Three paralegal assistants and 13 clerical staff support the division.

This is the largest division and it handles most of the felony cases in the department. These cases include murder, sex assaults, robbery, assaults, white collar crime, identity theft, campaign fraud, drugs, and property crime. In addition to the felony cases, the Trials Division handles most of the misdemeanor jury trials. Furthermore, all matters regarding the extradition of defendants to and from other states are handled by the Trials Division. Many high profile cases are handled by deputies from this division.

From July 1, 2006 to June 30, 2007, the division completed about 2,000 cases.

### **D. SCREENING AND INTAKE DIVISION**

The **Screening and Intake Division** (SID) consists of one division chief, 12 screening deputies, seven support staff, and two paralegal assistants.

SID screens most felony cases (except for domestic violence and white collar cases which are handled by a different division) brought to this department by the Honolulu Police Department and other State investigative agencies. SID primarily reviews felony cases and decides which ones to accept, which ones to reject, and which ones need follow-up work. SID also reviews search warrants, handles preliminary hearings in District Court, prepares and presents cases to the Oahu grand jury and prepares cases for information charging. In order to accomplish this, three prosecutors are dedicated to review search warrants and criminal felony cases brought in by the various law enforcement agencies five days a week during work hours. Two more prosecutors are on-call after hours and all day on weekends and holidays to assist police with various aspects of the investigation and, once completed, to review the case and make appropriate charging decisions. The remaining seven prosecutors review, assess, and prepare felony cases brought to SID, and also cover preliminary hearings, grand jury, and the information charging process.

SID covers a variety of felony offenses such as homicide, assault, terroristic threatening, identity theft, shoplifting, auto theft, and burglary to name just a few.

This past year, SID has focused much of its attention on introducing and implementing Information Charging (formerly known as Act 62) which was enthusiastically approved by voters in November 2004. SID reviews cases presented to our division and assess whether it qualifies for the information charging process, reviews and assesses the facts of the case, and prepares the necessary paperwork to process the case.

For the period beginning July 1, 2006 and ending June 30, 2007, SID processed 179 grand jury cases, 246 preliminary hearings and filed 895 information charging cases.

### **E. APPELLATE DIVISION**

The Appellate Division consists of one chief and six attorneys, all of whom are assisted by a paralegal and three support staff.

The appellate attorneys represent the State of Hawai'i in all appeals from juvenile, criminal and traffic cases prosecuted by the Department of the Prosecuting Attorney. In addition to matters filed in the Hawai'i appellate courts, attorneys in this division also respond to motions and original proceedings such as petitions for habeas corpus and writs of prohibition or mandamus. These responses and petitions are often extensive and cannot be predicted.

Appellate attorneys also represent the State of Hawai'i in federal habeas corpus proceedings in which the prisoner-petitioner contests the state court judgment. This division has seen a significant increase in federal litigation over the last year and utilizes electronic filing in federal court. Federal habeas cases at times require hearings and additional proceedings before the federal district court. When these cases progress to the federal appellate level, the Ninth Circuit Court of Appeals sets them for oral argument, either here in Honolulu or in San Francisco. Recently, the Appellate Division filed a Petition for Writ of Certiorari in the United States Supreme Court and also filed responses to Petitions for Writ of Certiorari filed by state defendants.

In addition, attorneys in the Appellate Division are called upon to provide research and reference assistance to both the administration and the other divisions within the department.

In fiscal year 2006-2007, the appellate attorneys filed 132 briefs in the State appellate courts, forty (40) Federal pleadings, and 217 other substantive pleadings. Attorneys in the division won 93% of their cases in the State appellate courts during this period.

## **F. MISDEMEANOR AND TRAFFIC DIVISION**

This division is a high-volume unit handling thousands of cases each month. The caseload consists of traffic matters, driving under the influence of alcohol/drug cases, criminal violations, petty misdemeanors, and full misdemeanors for the entire island of Oahu. This division has one chief, one captain, 16 trial lawyers, and approximately 20 support staff. Prosecutors from this division are assigned to courtrooms at district courts in Honolulu, Ewa (Pearl City), Wahiawa, Kaneohe, and Waianae. The assigned attorneys do arraignments, motions, trials, and sentencing for a wide variety of cases that are prosecuted in these courts. An attorney assigned to this division does specialized prosecution in street solicitation, waikiki visitor crimes, and weed and seed cases [see section on community prosecution].

## **G. 2007 LEGISLATIVE ACTIVITY AND 2008 LEGISLATIVE PACKAGE**

### **2007 Legislative Activity**

The department sponsored the following state legislative bills, which passed in 2007. These bills:

- a) Expand the misdemeanor offense of arson to include the reckless commission of the offense. In addition, the bill clarifies that arson property damage over ten thousand square feet qualifies for special sentencing. Act 11 took effect on April 9, 2007;
- b) Amend the offense of promoting a dangerous drug to delete a reference to a repealed law. Act 27 took effect on April 20, 2007; and
- c) Clarify the calculation of damage to agricultural products for the purposes of assessing damage for the offense of criminal property damage. This legislation passed as Act 88 and will become effective on July 1, 2007.

The department also supported the following bills which passed in 2007 that:

- a) Create a new class C felony offense of theft of copper and strengthen documentation requirements for the sale of copper to scrap metal dealers. In addition, Act 197 which took effect of June 19, 2007, also provides for enhanced penalties for repeat violations by scrap metal dealers of licensing or documentation requirements.
- b) Create a new class C felony offense of cruelty to animals in the first degree which applies when a person causes the death or serious bodily injury to a pet animal by intentionally or knowingly torturing, mutilating, or poisoning the pet animal. Act 114 took effect on June 1, 2007; and
- c) Made necessary technical amendments to criminal and administrative sanctions for persons who are found to have been operating a vehicle at .15 blood alcohol content or above.

### **2007 Legislative Package**

The department will be supporting legislation that strengthens Hawaii's murder laws and which provides enhanced grades of offenses for persons who are restrained from contacting or harassing victims of domestic violence but violate those restraining orders by committing new offenses against the victim. In addition, the department will support a constitutional amendment that provides that only "yes" and "no" votes would be counted for the purposes of ratifying an amendment to the state constitution or determining whether to convene a constitutional convention.

## **H. COMMUNITY PROSECUTION (CP) PROGRAM**

Community prosecution is a proactive, community oriented, problem-solving approach to law enforcement that embraces the role of the community in solving community crime problems. A key component of community prosecution is collaboration; private and public partnerships are developed and directed toward crime prevention goals. The CP Team consists of two attorneys who actively engage in a variety of initiatives designed to reduce crime and improve the quality of life in our community. Building on the prior foundation of our coordinated prosecution efforts in Weed and Seed that significantly reduced crime and lead to national State Coordination Honor Awards from the U.S. Department of Justice in 2004 (Weed and Seed Court) and in 2005 (Truancy Sweeps), in 2007, Honolulu CP attorneys were invited to participate in a case study for Weed and seed best practices. The case study will feature successful community prosecution models that can be implemented in other jurisdictions nationwide.

## **I. DRUG COURT**

There is one Deputy Prosecuting Attorney assigned to the Hawaii Drug Court Program. This attorney attends drug court sessions two times a week to monitor the progress of drug court clients and provide the prosecution's perspective on dealing with program infractions. In addition to the regularly-scheduled court sessions, this deputy attends all other drug court proceedings such as termination hearings, prepares memoranda of law and argues constitutional motions, conducts jury-waived trials, and argues sentencing. This attorney also reviews all applicants for drug court and plays an integral part in selecting appropriate candidates for this program. This attorney also assists in developing and improving the program, attends drug court advisory committee meetings, educates personnel in the department, the Honolulu Police Department, and the community about the program, and created a written manual of procedures, policies and guidelines.

Between July 1, 2006 and June 30, 2007, new defendants were petitioned into the Hawaii Drug Court Program. During that time, 48 defendants graduated, spending an average of 22 months in the program. The Hawaii Drug Court Program terminated 12 defendants for non-compliance with program rules. Approximately two-thirds of those terminated received prison sentences, and the remainder received probation and up to one year of imprisonment. As of June 30, 2007, the Hawaii Drug Court Program had 121 participating defendants.